

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM R. RILEY,
Petitioner

v.

CIVIL ACTION NO.
11-10789-PBS

GARY RODEN,
Respondent.

REPORT AND RECOMMENDATION RE:
RESPONDENT'S MOTION TO DISMISS PETITION
FOR WRIT OF HABEAS CORPUS
(DOCKET ENTRY # 4)

April 5, 2012

BOWLER, U.S.M.J.

On May 4, 2011, petitioner William R. Riley ("petitioner"), an inmate at the Massachusetts Correctional Institute in Norfolk, Massachusetts ("MCI-Norfolk") signed a petition for a writ of habeas corpus under 28 U.S.C. § 2254(d) ("section 2254").

Docketed and filed the next day, the petition attacks petitioner's 1998 conviction for second degree murder under the third prong of malice¹ rendered in Massachusetts Superior Court

¹ "The elements of murder in the second degree are (1) an unlawful killing and (2) malice." Commonwealth v. Earle, 937 N.E.2d 42, 47-48 (Mass. 2010). Malice is established by proving any of one of three facts or prongs that: "(1) the defendant intended to kill the victim (the so-called first prong of malice), or (2) the defendant intended to do the victim grievous bodily harm (the second prong), or (3) in the circumstances known to the defendant, a reasonably prudent person would have known that, according to common experience, there was a plain and strong likelihood that death would follow the contemplated act

5/3/2012
I admit the report and recommendation
without exception. The motion is
dismissed. *Paul S. Jans*